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Security Council
Sixty-third year

Letter dated 24 September 2008 from the Secretary-General addressed to the President of the General Assembly

I attach for your attention two letters, dated 5 June 2008 and 1 September 2008, from Judge Fausto Pocar, President of the International Tribunal for the Former Yugoslavia, addressed to me (see annexes I and II).

President Pocar seeks the extension of the terms of office of the permanent and ad litem judges elected to serve with the Tribunal in 2005 and whose terms of office expire on 16 November 2009 and 23 August 2009, respectively. In addition, President Pocar requests an extension of the terms of the remaining ad litem judges who are not currently appointed to serve at the Tribunal.

In his letter dated 1 September 2008 (see annex II), President Pocar has given details of the necessity and urgency of this request, primarily to ensure that the judges may complete the cases to which they are assigned. You will note that one trial is scheduled to commence on 1 October 2008, and therefore it is a matter of urgency that the judges are immediately assigned to that case.

The statute of the International Tribunal does not provide for the extension of the terms of office of the Tribunal's judges. In the absence of such a provision, the approval of the Security Council, as the parent organ of the Tribunal, and of the General Assembly, as the organ that elects its judges, would be needed.

I would be grateful if you would have the present letter and its annexes circulated as a document of the General Assembly, under agenda item 154 and of the Security Council.

(*Signed*) **Ban** Ki-moon

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Annex I

By the present letter, I wish to bring your attention to the situation of the 27 ad litem judges of the International Tribunal for the Former Yugoslavia, who were elected at the 116th plenary meeting of the fifty-ninth session of the General Assembly on 24 August 2005 and whose four-year term ends on 23 August 2009.

A considerable number of pending trials are unlikely to conclude before 23 August 2009. Consequently, the International Tribunal needs an extension of the terms of the ad litem judges in order to properly manage its trials. Currently, we need an extension of term for two ad litem judges to allow the Tribunal to start cases in July. In that respect, we are seeking assignment from the Secretary-General of ad litem Judges Michèle Picard (France) and Flavia Lattanzi (Italy) to Case No. IT-04-81, *Prosecutor v. Momčilo Perišić*, which is scheduled to start on 24 July 2008 and is anticipated to last approximately 17 months. Given the need to render a number of important decisions before the start of the trial, we request that these assignments take effect on 6 June 2008.

In order to facilitate appointments by the Secretary-General of other ad litem judges to cases currently anticipated to start towards the end of 2009, we request that the terms of our list of elected ad litem judges be extended for a period of 12 months from the expiration of their terms on 23 August 2009.

We would be grateful if the Secretary-General could bring this request to the attention of both the Security Council and the General Assembly as soon as possible and, should the request be received favourably, that the Secretary-General make the assignments of Judges Picard and Lattanzi to the *Perišić* case as a matter of urgency.

(*Signed*) Fausto **Pocar**
President

Annex II

I refer to my letter of 5 June 2008, in which I brought to your attention the situation of the 27 ad litem judges of the International Tribunal for the Former Yugoslavia who were elected at the 116th plenary meeting of the fifty-ninth session of the General Assembly on 24 August 2005 and whose four-year term ends on 23 August 2009. In that letter, I requested an extension of the terms of our list of elected ad litem judges for a period of 12 months from the expiration of their terms on 23 August 2009.

While the request made in my letter of 5 June 2008 remains pending, it appears prudent for me to make additional requests, as follows:

1. Urgent request for the extension of three ad litem judges

The first request pertains to the extension of the terms of office of ad litem Judges Michèle Picard and Pedro David in order that they may sit in the trial of *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81, and of ad litem Judge Flavia Lattanzi so that she may sit in the trial of *Prosecutor v. Jovica Stanišić and Franko Simatović*, Case No. IT-03-69. The reasons are as follows.

I refer to my letter of 19 February 2008, in which I requested the appointment of ad litem Judge David to the *Stanišić* and *Simatović* case, my two letters of 26 May 2008, in which I requested, respectively, the appointment of ad litem Judges Lattanzi and Picard to the *Perišić* case, and my letter of 15 July 2008, in which I requested, due to scheduling conflicts, that Judge Lattanzi be withdrawn from the *Perišić* case and be appointed to serve on the *Stanišić and Simatović* case and that Judge David be withdrawn from the *Stanišić and Simatović* case and appointed to serve on the *Perišić* case.

As I advised in my letters of 26 May and 15 July 2008, the appointment of ad litem Judges Picard and David to the *Perišić* case would require an extension of their terms of office. In order to ensure the efficient management of the Tribunal, one must be certain that an ad litem judge appointed to a trial will be available until completion of that trial. If an ad litem judge had to be replaced in the course of a trial because his or her term of office comes to an end, the trial would have to be restarted. This would clearly cause significant delay and adversely impact our meeting completion strategy targets. For this reason, the extension at this time of the terms of office of ad litem Judges Picard, David and Lattanzi is a matter of urgency.

The *Perišić* trial is scheduled to start on 1 October 2008, and due to its complexity, is anticipated to last a period of 24 months — that is, until October 2010. The accused, Momčilo Perišić, who served as Chief of General Staff of the Yugoslav Army between August 1993 and November 1998, is the most senior military leader to be tried at this Tribunal. He is charged with direct and superior responsibility for 13 counts of war crimes (murder and attacks on civilians) and crimes against humanity (extermination, murder, persecutions and inhumane acts) in relation to events alleged to have taken place in Sarajevo (between August 1993 and November 1995), Zagreb (between 2 and 3 May 1995) and Srebrenica (between 12 and 20 July 1995). The case involves a very large amount of evidence (9,000 exhibits and 229 Prosecution witnesses), and extensive pretrial management has taken place. The Prosecution has already reduced its case from 907 to 480 hours

and, at the invitation of the Chamber, parties are exploring further avenues to reduce the length of the case.

To enable ad litem Judges Picard and David to serve on the *Perišić* trial, in light of the aforementioned trial schedule, we currently need an extension of their terms beyond the date of 23 August 2009, when their terms are scheduled to expire, in order that they may complete the case.

As for the *Stanišić and Simatović* case, the trial is currently adjourned and is anticipated to recommence in September 2008 and to take 12 months, concluding in September 2009. The extension of the term of office of Judge Lattanzi is therefore also required to the conclusion of the trial.

2. Urgent request for the extension of two permanent judges

In addition to the three ad litem judges above, I also seek the urgent extension of the terms of office of permanent Judge Bakone Justice Moloto to enable him to complete the *Perišić* case, and permanent Judge Patrick Robinson to enable him to complete the *Stanišić and Simatović* case. The term of office for both judges will expire on 16 November 2009.

In light of the *Perišić* trial schedule previously outlined, it would be necessary to extend Judge Moloto's term of office beyond the date of 16 November 2009 to enable him to complete the *Perišić* case.

The *Stanišić and Simatović* trial is scheduled to recommence in September 2008 and anticipated to last for approximately 12 months. However, the Trial Chamber has faced numerous difficulties in connection with the illness of one of the accused and of the defence counsel. It is therefore highly likely that the trial will not conclude by 16 November 2009. For this reason, I request the extension of Judge Robinson's term of office in order that he may complete the *Stanišić and Simatović* should it continue beyond the expiry of his term of office.

3. Request for extensions in two cases pending trial

In order to avoid returning to the Security Council with further requests for extensions in the coming months, I also now request extensions of the terms of office of the ad litem and permanent judges to be assigned to the following cases expected to commence before the end of the year:

(a) Prosecutor v. Mićo Stanišić, Case IT-04-79

The *Stanišić* case is scheduled to commence in October 2008 for an estimated period of 12 months. I intend to request that ad litem Judge Fredrik Harhoff be appointed to sit on this case. I therefore seek the extension of Judge Harhoff beyond the date of 23 August 2009 in order that he may conclude the case. Currently, there is a pending motion to join the *Stanišić* case with the case of *Prosecutor v. Stojan Župljanin*, Case No. IT-99-36/2. Should that joinder motion be successful, this case will be jointly tried with the *Stanišić* case and the two cases should be completed within 18 months.

(b) Prosecutor v. Vlastimir Đorđević, Case No. IT-05-87/1

The *Đorđević* case is currently scheduled to start in November 2008 in the event that the *Stanišić and Simatović* is unable to recommence in September 2008 due to the illness of the accused. I intend to seek the appointment of ad litem Judges Lattanzi and Picard and permanent Judge Flügge to sit on this case. This case is anticipated to last for approximately 12 months. It would therefore be necessary to extend the terms of ad litem Judges Lattanzi and Picard beyond the date of 23 August 2009 in order that they may conclude this case.

4. Request for extensions in ongoing trials

The trial of *Prosecutor v. Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Corić and Berislav Pušić*, Case No. IT-04-74, commenced on 26 April 2006 and is currently estimated to conclude in March 2010. This case is presided over by Judge Jean-Claude Antonetti, and with him sit three ad litem judges, Judges Árpád Prandler, Stefan Trechsel and Antoine Kesia-Mbe Mindua (reserve). In order to enable these judges to complete this trial, I hereby request an extension of the term of office of permanent Judge Antonetti beyond the date of 16 November 2009 and the extension of the terms of office of ad litem Judges Prandler, Trechsel and Mindua from 23 August 2009 to enable them to complete the case.

The trial of *Prosecutor v. Ante Gotovina, Ivan Čermak and Mladen Markač*, Case No. IT-06-90, commenced on 11 March 2008 and is currently expected to conclude in October 2009. The trial is presided over by permanent Judge Alphons Orie, and with him sit two ad litem judges, Judges Uldis Ķinis and Elizabeth Gwaunza. The length of this case is now expected to exceed the terms of office of the two ad litem judges appointed to this case. I hereby also requested the extension of the terms of office of Judges Ķinis and Gwaunza to enable them to complete the case.

5. Future requests

I would like to emphasize that it would be greatly preferable for the Tribunal to have maximum flexibility in the assignment of its ad litem and permanent judges, and in that respect, for the Security Council to grant the request I made in my letter of 5 June 2008 (A/62/897-S/2008/437, annex), to extend the term of the Tribunal's ad litem judges by a period of 12 months. This would also ensure that the Tribunal is accorded the same treatment as has been given to judges of the International Criminal Tribunal for Rwanda. Additionally, rather than seek a piecemeal approach to the extension of the Tribunal's permanent judges, it would also be greatly preferable if the Tribunal is given maximum flexibility and the terms of all of its permanent judges were extended. Again, this would ensure equal treatment of the Tribunal's permanent judges with those of the International Criminal Tribunal for Rwanda. In any event, I note that all of the Tribunal's existing permanent judges assigned to the Appeals Chamber will have to be extended beyond the expiration of their term in November 2009, as it is currently anticipated that appeals work will not be completed until the close of 2011, at the earliest. Additionally, I note that it is anticipated that an influx of appeals cases from the International Criminal Tribunal for Rwanda will arrive at the end of 2009 and will necessitate the transfer of some of the Tribunal's trial judges to the Appeals Chamber. I would appreciate it if the

request for the extension of the terms of the identified permanent judges in the above instances could be considered against the likelihood that all of the Tribunal's permanent judges will, of necessity, require extensions.

(a) *Prosecutor v. Zdravko Tolimir*, Case No. IT-05-88

It is presently anticipated that the *Tolimir* trial will commence in July 2009, with two permanent judges and one ad litem judge. The current estimate is that this case will run for a period of 14 months, to conclude by September 2010. I am not in position at present to determine which judges will be sitting in this trial, however I expect that it will be two permanent judges and one ad litem judge. I wish, however, to draw your attention to the fact that it will be necessary at a future stage to extend the terms of office of the permanent and ad litem judges to enable them to conclude the case.

(b) *Prosecutor v. Stojan Župljanin*, Case No. IT-99-36/2

Currently, there is a pending motion to join the *Župljanin* case with the *Stanišić* case. The situation in case of joinder is described in section 3 (a) above. It is too early to determine which judges would be assigned to sit on the separate trial in the *Župljanin* case in the event the joinder motion is denied.

(c) *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18

The trial of Radovan Karadžić had not yet been factored into the overall Tribunal trial schedule, his arrest having only been effected on 21 July 2008. It can however be anticipated that the extension of the terms of office of both the permanent and ad litem judges will be required.

Kindly note that the anticipated commencement of the above trials and the projected length of each case as provided in the aforementioned paragraphs are based on current estimates. These estimates are subject to delays due to factors beyond the control of the Tribunal, such as the health of the accused. On the other hand, please rest assured that the Tribunal continues to seek new ways of expediting its proceedings without sacrificing the due process rights of the accused.

Additionally, due to the complexities of trying to schedule seven trials in only three courtrooms, it can happen that an anticipated assignment is rendered impossible due to conflicts in the court schedule, delays in other trials to which a judge is already assigned and other unforeseen complications. Thus, while the Tribunal has attempted to anticipate the assignments that will be requested for its next cases, such an assessment is more art than science. In this respect, the Tribunal would be in a position to better manage its proceedings by being granted flexibility in its assignments through extensions of terms of all of its ad litem judges and permanent judges.

Financial implications

The budget of the International Tribunal for the biennium 2008-2009, as approved by the General Assembly in December 2007, is based on the assessment of judicial needs as detailed in the present letter. I should note that the approved budget does not account for the additional budgetary implications related to two accused, Stojan Župljanin and Radovan Karadžić, whose arrests occurred after the

submission and approval of the budget. Save for these two accused, the above requests pose no additional budgetary implications for the Tribunal.

I would be grateful if you could bring this request to the attention of both the Security Council and the General Assembly as soon as possible, and should the request be received favourably, make the necessary appointments of ad litem judges as a matter of urgency.

I remain at your disposal for any additional information you may require concerning my request. Thank you in advance for your action in this regard.

(*Signed*) Fausto **Pocar**